

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3524 OF 1997

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DINESH R. PATEL

VERSUS

THE STATE OF GUJARAT & ANR.  
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Appearance:

MR GT DAYANI for Petitioner

None present for Respondents  
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CORAM: MR.JUSTICE S.K.KESHOTE

Date of Order:19/01/1998

C.A.V.ORDER

Heard learned counsel for the petitioner.

2. Challenge has been made by petitioner to the order dated 6th March 1996 of the Gujarat Public Works Contracts Disputes Arbitration Tribunal, Ahmedabad, passed in Arbitration Reference No.37 of 1996, under which the Reference has been dismissed as being time barred.

3. Admittedly, the petitioner filed that petition under Section 8 of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 (hereinafter referred to as the 'Act 1992') before the Arbitration Tribunal. The learned counsel for the petitioner does not dispute that under Section 8 of the Act 1992, the limitation for filing of the Reference is of one year from the date of accrual of the cause of action. The Tribunal has found, as a fact, that on 18.4.92, the Deputy Engineer informed the petitioner that he had carried out the work to the extent of Rs.1,05,000/- and left it incomplete. On 23rd November 1992, the Executive Engineer addressed a notice to the petitioner calling upon the petitioner to take corrective satisfactory action within fourteen days and warned him that on his failure to take such action, the remaining work would be got completed through another agency at his risk and cost. This notice has been issued under clause 45 of the Agreement. In the legal notice which has been sent by petitioner on 4.10.93 to the Executive Engineer, he

prayed for deciding his claim under clause 51 of the General Conditions of the contract. Under the notice dated 18th November 1993 of the Department, the petitioner was called upon to remain personally present at the site for measurement of incomplete work on 19.11.93. The petitioner sent a representation on 6th November 1993 to the Chief Engineer describing it as an appeal, to decide his claim under clauses 51 and 52 of the Tender Agreement, by alleging that the Executive Engineer has wrongly rejected his claim. The Executive Engineer replied to the aforesaid notice of the petitioner by submitting para-wise reply on 15.12.93 which was accompanied by a brief note stating that the petitioner had carried out work to the extent of 80% upto 26th March 1992 and had stopped the work thereafter. It has further been stated in the note that a notice under clause 45 of the Agreement dated 23.11.92 had been served on the petitioner and finally the contract was terminated on 15.5.93. A contention has been made by the petitioner's counsel before the Tribunal that the order of termination of contract was not served upon the petitioner. This contention has been repealed by the Tribunal on the ground that no such averment has been made by petitioner in the petition. Further, the Tribunal has found as a fact that the petitioner did come to know about this fact atleast on 15th December 1993. It is admitted fact that the petitioner filed appeal to the higher authorities in the Department against the action of lower authorities in the matter. So it concludes that the claim of the petitioner was not accepted and it was specifically rejected. The petitioner has further admitted in the Special Civil Application that on 4.2.94, the Government of Gujarat informed the petitioner that his claim is not tenable and refused to make the payment. So, if we go by the date of termination of the contract, or the date of knowledge of termination of contract or the letter of the Government of Gujarat dated 4.2.94, the petition filed by petitioner under Section 8 of the Act 1992 is beyond the limitation prescribed for filing of the same. The explanation given for delay in filing of the petition is wholly untenable. The contention of the learned counsel for the petitioner before this Court that until final bill is prepared, the cause of action does not accrue is not tenable for the reason that the learned counsel for the petitioner has admitted before this court that the petitioner has challenged the action of the respondent to terminate the contract and secondly the petitioner has lodged his claim and that has specifically been denied by respondents.

4. Taking into consideration the totality of the

facts of the case, I am of the considered opinion that the Tribunal has not committed any illegality, much less a jurisdictional error in holding that the petition filed by the petitioner under Section 8 of the Act 1992 before it is barred by time. The Tribunal has rightly rejected the application on the ground of limitation. In the result, this Special Civil Application fails and the same is dismissed. Notice discharged.

(S.K.Keshote, J)

(sunil)